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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Myanmar, prepared by Judge Rajsoomer Lallah, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1996/80 of 23 April 1996.

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CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 11	3
II.	THE INTERNATIONAL NORMS GOVERNING HUMAN RIGHTS	12 - 15	6
III.	BASIC LEGAL FRAMEWORK GOVERNING THE EXERCISE OF POLITICAL RIGHTS IN MYANMAR	16 - 34	7
	A. The establishment of the State Law and Order Council and the imposition of martial law	17 - 20	7
	B. The general elections of May 1990	21 - 22	8
	C. Declaration No. 1/1990 and the National Convention	23 - 29	9
	D. Non-conformity of the legal framework with international norms	30 - 33	11
	E. Remedial measures for the re-establishment of constitutionality and the democratic order	34	12
IV.	IMPACT OF MYANMAR LAW ON HUMAN RIGHTS	35 - 145	12
	A. Extrajudicial, summary or arbitrary executions	37 - 42	13
	B. Torture and other cruel, inhuman or degrading treatment	43 - 51	14
	C. Arbitrary arrest and detention	52 - 61	15
	D. Due process and the rule of law	62 - 71	17
	E. Prison conditions	72 - 82	19
	F. Freedom of opinion	83 - 94	22
	G. Freedom of assembly and association	95 - 116	24
	H. Freedom of movement and forced relocation	117 - 125	28
	I. Forced labour	126 - 145	30
V.	CONCLUSIONS AND RECOMMENDATIONS	146 - 153	34
	A. Conclusions	146 - 152	34
	B. Recommendations	153	36
Annex.	Extracts from the State Law and Order Restoration Council Declaration No. 1/90		39

I. INTRODUCTION

1. The Special Rapporteur on the situation of human rights in Myanmar (originally Professor Yozo Yokota) was appointed by the Chairman of the Commission on Human Rights in accordance with Commission resolution 1992/58 of 1992. Professor Yozo Yokota submitted his first report on the situation of human rights in Myanmar to the General Assembly at its forty-seventh session and to the Commission on Human Rights at its forty-ninth session. In pursuance of resolutions of the General Assembly and the Commission on Human Rights, the mandate was successively extended by the Commission in 1993, 1994 and 1995. On 23 April 1996, the Commission on Human Rights, by its resolution 1996/80, decided to extend for one year the mandate of the Special Rapporteur to establish or continue direct contacts with the Government and people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers and requested the Special Rapporteur to report to the General Assembly at its fifty-first session and to the Commission on Human Rights at its fifty-third session. On 24 July 1996, the Economic and Social Council, in its decision 1996/285, approved Commission resolution 1996/80.

2. For professional reasons, Professor Yokota resigned as Special Rapporteur on 12 May 1996. The present Special Rapporteur wishes to pay tribute to the eminently constructive work performed by his predecessor in the past years in the discharge of his mandate.

3. Following the resignation of Professor Yokota, Ambassador Saboia, Chairman of the fifty-second session of the Commission on Human Rights, decided to appoint Judge Rajsoomer Lallah as the Special Rapporteur on the situation of human rights in Myanmar for the purpose of implementing the aforesaid resolutions of the Commission on Human Rights and the General Assembly.

4. On assuming his mandate, the present Special Rapporteur has tried to identify the priority concerns of the international community with regard to the situation of human rights in Myanmar. Such concerns are referred to in the resolutions which the various competent organs of the United Nations have adopted over the past five years but more particularly in General Assembly resolution 50/194 of 22 December 1995 and Commission resolution 1996/80, which were the ones most recently adopted. These concerns constitute the substantive content of the Special Rapporteur's mandate. They may be summarized as follows:

(a) The electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion and the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections;

(b) Many political leaders, in particular elected representatives, remain deprived of their liberty;

(c) Violations of human rights remain extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, forced labour, including forced portering for the military, abuse of women, politically motivated arrests and detention, forced displacement, serious restrictions on

the freedoms of expression and association, and the imposition of oppressive measures directed, in particular, at ethnic and religious minority groups;

(d) The continuing fighting with ethnic and other political groups, despite the conclusion of cease-fire agreements, together with the continuing violations of human rights, has resulted in flows of refugees to neighbouring countries.

5. Given the gravity of the concerns highlighted, the mandate remains a most sensitive and difficult one since it relates to the very nature of the administration of a State Member of the United Nations and its adverse impact on the observance and protection of basic human rights and freedoms. With a view to discharging that mandate in the most impartial and effective manner, the Special Rapporteur immediately after his nomination, sought the cooperation of the Government of Myanmar. Accordingly, on 9 July 1996, the Special Rapporteur wrote a first letter to the Government of Myanmar through its Permanent Representative to the United Nations Office at Geneva. In that letter, he stated, inter alia:

> "In accepting to serve as Special Rapporteur, I am fully aware of the important and demanding responsibilities with which the Commission has entrusted me. I would like to assure Your Excellency that I intend to carry out my mandate in the most impartial and objective manner and that I shall endeavour to base my reports on all relevant and credible information which may be submitted to me. In this connection, a primary and most valuable source of information would undoubtedly be Your Excellency's Government.
>
> "I would be most grateful if I were to receive the cooperation of Your Excellency's Government in order to allow me to discharge my mandate fully and reliably in reporting to the Member States of the United Nations and to ensure that the General Assembly and the Commission on Human Rights are presented with an accurate and comprehensive assessment of the situation of human rights in Myanmar. In this connection, and in accordance with operative paragraphs 21 and 23 of Commission resolution 1996/80, I would wish to visit Myanmar as soon as possible to examine the situation in situ and to meet with appropriate Governmental representatives as well as other persons relevant to the fulfilment of my mandate ..."

6. On 26 July 1996, the Special Rapporteur addressed a second letter to the Permanent Representative of Myanmar to the United Nations Office at Geneva, in which he reiterated his request for cooperation and to visit Myanmar.

> "In a letter addressed to Your Excellency on 8 July 1996, I have requested to undertake a visit to Myanmar to meet with appropriate governmental representatives as well as other persons relevant to the fulfilment of my mandate. Accordingly, and in keeping with my commitment to endeavour to accord full consideration to your Government's views on the substantive issues raised in my mandate, including both general and specific allegations of human rights violations by the Government of Myanmar, I am reiterating my wish to visit your country.

"Specifically, and keeping in mind the deadline for the submission of my report to the General Assembly, I would hope that your Government would agree to my visit from 20 August through 2 September 1996 so that I may provide the General Assembly with an accurate and comprehensive assessment of the situation of economic, social, cultural, civil, and political rights in Myanmar ..."

7. So far, the Special Rapporteur has received no reply from the Government of Myanmar. In this connection, the attention of the Special Rapporteur has been drawn to a letter addressed to the Chairman of the fifty-second session of the Commission on Human Rights by the Permanent Representative of Myanmar dated 4 July 1996 (No. 287/3-27/02-21). In that letter, the Permanent Representative indicated that Myanmar had disassociated itself from the decision of the Commission on Human Rights at its forty-eighth session to raise the level of consideration about the situation in Myanmar through the appointment of a Special Rapporteur and that his Government refused to accept the appointment of the Special Rapporteur, as such an exercise was "intrusive and constitutes unwarranted interference in our internal affairs". The Permanent Representative further stated that Myanmar continued to maintain this position and that the Chairman's decision to appoint the present Special Rapporteur on the situation of human rights in Myanmar was unacceptable, as in the case of the previous Special Rapporteur, Professor Yozo Yokota.

8. It is appropriate to recall that the Government of Myanmar nevertheless did allow Professor Yokota to visit Myanmar on several occasions to enable him to fulfil the mandate conferred upon him by the Commission on Human Rights. The absence of a response by the Government of Myanmar to the Special Rapporteur's request for a visit is, in the circumstances, not understandable. However, the absence of a response, coupled with the refusal of the Government of Myanmar to accept the appointment of a Special Rapporteur, call for a few observations.

9. It should be recalled that a considerable number of resolutions of the Commission on Human Rights establishing various procedures with regard to the human rights situation in certain States have not required the express consent of the States concerned. Those procedures have been established on the basis of the general and implicit powers of the Commission, in the light of the principles enshrined in the Charter of the United Nations governing the promotion of universal respect for and, observance of, human rights and freedoms and in the light of the obligations deriving from the pledge given by States Members to take joint and separate action in cooperation with the organs of the United Nations to implement those principles. In this regard, the Special Rapporteur also recalls the practice which has been developed over the years in the relevant organs of the United Nations in the achievement of those principles.

10. With regard to the stand of Myanmar relating to intrusiveness and interference in its internal affairs by the procedure of the appointment of a Special Rapporteur, it must be observed that this stand does not conform to the obligations undertaken by Myanmar under Article 56 of the Charter to cooperate with the United Nations and its organs and cannot relieve the relevant organs of the United Nations from the duty of performing their functions. This stand further cannot frustrate the General Assembly or the Commission on Human Rights

in carrying out their functions in accordance with the procedures which have been developed over the years.

11. The Special Rapporteur feels bound to record his regret that the Government of Myanmar would appear to adopt an attitude of non-cooperation. Clearly, the refusal of the Government to cooperate has rendered the task of the Special Rapporteur more difficult in determining the factual situation as it has evolved since October 1995. More particularly, it seeks to frustrate the resolution of the Commission in which the Special Rapporteur was mandated "to establish or continue direct contact with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers" (para. 21 of resolution 1996/80) and to have free access to any person in Myanmar whom he may deem appropriate (para. 23). It is also a matter of regret that the absence of a response from the Government of Myanmar has not rendered possible the engagement of a constructive dialogue with the Government in the light of the analysis which the Special Rapporteur has made of the present situation, the current laws and practices, and the developments described in the report and which manifestly have an unfavourable impact on human rights in Myanmar. The Special Rapporteur greatly hopes that the Government of Myanmar will cooperate and engage in such a dialogue in response to the concerns of the international community, as expressed in the resolutions so far adopted by the General Assembly and the Commission on Human Rights.

II. THE INTERNATIONAL NORMS GOVERNING HUMAN RIGHTS

12. As a Member State of the United Nations, Myanmar has undertaken to respect the human rights obligations contained in the Charter. Those obligations are expressed in the Preamble, and in Articles 1 (3), (55) (c) and 56. Further specificity to those obligations has been provided by, inter alia, the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)); the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII)); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (resolution 3318 (XXIX)).

13. In addition to its obligations under the Charter of the United Nations, other obligations by Myanmar include those arising under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the Slavery Convention of 1926 (as amended by its protocol of 7 December 1953), and the Convention on the Rights of the Child of 1989. It is to be noted that Myanmar is a member of the International Labour Organization (ILO) and is a party to its conventions concerning forced labour (No. 29) and concerning freedom of association and protection of the right to organize (No. 87).

14. On 24 August 1992, Myanmar acceded to the four Geneva Conventions of 1949 relative to humanitarian laws of armed conflict.

15. Of particular, though not exclusive, significance in the case of Myanmar at the present juncture of its constitutional evolution are the norms proclaimed in the Universal Declaration of Human Rights:

(a) The exercise of political rights without distinction on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (articles 2 and 21);

(b) The rights through which political rights themselves can properly and meaningfully be exercised, that is to say, the right to freedom of thought, the right to freedom of opinion and expression, to seek, receive and impart information and ideas through any media (articles 18 and 19), the right to freedom of peaceful assembly and association (article 20), and the right to freedom of movement (article 13);

(c) The right to equality before the law, including protection of the law and the right to a fair and proper trial by an independent and impartial tribunal and the right to procedural guarantees necessary for one's defence (articles 7, 10 and 11);

(d) The right to life, liberty and security of person (article 3);

(e) The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment or to arbitrary arrest or detention (articles 5 and 9).

III. BASIC LEGAL FRAMEWORK GOVERNING THE EXERCISE OF POLITICAL RIGHTS IN MYANMAR

16. In order to understand the legal framework in Myanmar governing human rights in general, and political rights in particular, it is necessary to retrace the recent political history of Myanmar since it became a sovereign State. In his last report to the Commission on Human Rights in March this year (paras. 5 to 18 of E/CN.4/1996/65), the Special Rapporteur recalled much of that history and it will only be necessary to mention the most salient events.

A. The establishment of the State Law and Order Council and the imposition of martial law

17. In 1988, a wide-ranging and violent revolt by the people took place as a combined reaction against, first, the long-felt suppression of civil and political liberties since the overthrow of the Constitution in 1962 and the failure of the economic and social policies practised under the system of the "Burmese Way to Socialism". There were thousands of deaths and significant numbers of people who suffered severe injuries and destruction of property in circumstances which may be said to have given rise to a state of emergency.

18. In these circumstances, as announced in Declaration 1/88 of 18 September 1988, the Armed Forces established martial law, overturning the Constitution of 1974, dissolved all State organs, including the Pyithu Hluttaw

(People's Assembly) and the State Council. The Armed Forces constituted for itself the State Law and Order Council (SLORC) which assumed all legislative, executive and judicial powers. Legislative power was exercised by instruments variously called laws, decrees or announcements. Administrative power was delegated at regional and local levels (that is to say, at the division/State, township and ward/village levels) to Law and Order Restoration Councils (LORCs) composed of both civilian and army defence personnel. With regard to the exercise of judicial power, various levels of courts were established to handle ordinary criminal and civil cases. From a juridical standpoint, the assumption of power by SLORC constituted a break from constitutionality and legal continuity. However, everything indicated that SLORC did not intend to arrogate to itself for all time the extra-constitutional powers it had assumed.

19. As indicated in Declaration No. 1/488, SLORC set itself four objectives: first, the re-establishment of peace and tranquillity in the country; second, the restoration and provision of communication and transport; third, measures to ensure better supply of food, clothing and shelter by facilitating the operations of private enterprise and the cooperatives in these sectors; and fourth, when the first three measures would have been accomplished, the holding of multi-party democratic elections to be held in a free and fair manner.

20. In due course peace and order must have been sufficiently re-established to allow a return to civilian rule, as SLORC established by law an Election Commission, including provisions for the registration of political parties. It also, most importantly, promulgated the People's Assembly Elections Law for the holding of free and fair multi-party democratic elections. All indications were that the ground was set for the ending of martial law and the transfer of government to the civilian representatives to be elected by the will of the people.

B. The general elections of May 1990

21. In May 1990, general elections to the People's Assembly were held in Myanmar. More than 90 political parties contested the elections, among which were the National Democratic League (NLD), the National Unity Party (NUP) and the League for Democracy (LDP). The elections were generally accepted to have been held in a free and fair manner. NLD won the overwhelming support of the electorate and obtained over 80 per cent of the seats in the People's Assembly (392 out of a total of 485) with a 60 per cent share of the vote.

22. It was generally expected that the People's Assembly, as a constituent assembly, would be convened for the drawing up of a constitution and, in the meantime, to form an interim government. A number of obstacles, however, came one after another to thwart the freely expressed will of the people at the general elections and SLORC continued to exercise all powers under martial law. It is necessary to refer to some of these obstacles.

C. Declaration No. 1/1990 and the National Convention

23. First, the official announcement of the results of the poll was postponed for the apparent purpose of allowing the Election Commission to scrutinize the expense accounts of all elected representatives. Second, two months later, in July 1990, SLORC issued Declaration 1/1990, the most important parts of which are reproduced in the annex to the present report. What was clear at this juncture was that SLORC would continue to exercise all powers of State; there would be no transfer of power to the Civil Authorities, whether under an interim constitution or otherwise, until a new constitution was enacted; and it would be the responsibility of representatives elected at the general elections to the People's Assembly to draft the new constitution.

24. Subsequent events have shown, however, that various measures were progressively taken, effectively preventing, or at best delaying, the People's Assembly from being convened. On 18 October 1990, SLORC Deputy Foreign Minister U Ohn Gyaw announced in the General Assembly that a broadly based national convention would be convened to discuss all factors that should be taken into account in drafting the new constitution. Its drafting would be the responsibility of the elected representatives. One year later, also in the General Assembly, Deputy Foreign Minister U Ohn Gyaw stated that in addition to the elected representatives, leaders of political parties, leaders and representatives of all national races and respected veteran politicians would participate in the convention. On the basis of the national consensus arrived at in the convention, the elected representatives would draw up a new constitution.

25. It is evident that the issue of convening a National Convention to draw up guidelines or principles for the eventual drafters of the new constitution and the issue of the delegates composing the National Convention emerged as a controversial and unexpected element in the envisaged process of the transfer of power. Further, a significant proportion of the elected members of NLD have subsequently been arrested and imprisoned or else disqualified temporarily or for life from membership of the People's Assembly.

26. In 1992, a National Convention Committee was formed by SLORC with the purpose of convening a National Convention to draw up a new constitution. Its objectives were: non-disintegration of the Union; non-disintegration of national solidarity; perpetuation of sovereignty; the establishment of a genuine multi-party democratic system; the promotion of justice, liberty and equality in the State; and the participation of the Tatmadaw (Armed Forces) in a leadership role in the affairs of the State. It is to be noted that the mandate of the National Convention Committee was not only to select delegates to attend the National Convention but also to direct the proceedings and to lay down its objectives, one of which included "the participation of the Tatmadaw in a leadership role in the national politics of the State".

27. On 9 January 1993, the Government convened the National Convention to lay down the basic principles for the elaboration of a constitution. In a report to the Commission, the Special Rapporteur noted that, of the 702 National Convention delegates from eight categories, 49 were selected by the 10 political parties remaining after the 1990 elections, 106 were elected representatives and

the remainder of the delegates from the six other categories were chosen by SLORC. In fact, NLD members, despite winning a little more than 80 per cent of the seats in the 1990 general elections, comprise only about 15 per cent of the 702 delegates and are thus permanently in a minority. Furthermore, the Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group, only one chairman was from NLD, the party that had won the majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from NLD, no NLD representatives were selected as chairmen.

28. On 28 November 1995, the Government of Myanmar reconvened the National Convention. Following the opening address delivered by Lt. Gen. Myo Nyunt, Chairman of the National Convention Convening Commission, the representatives and delegates of NLD decided to boycott the Convention following the denial of an NLD request to review its working procedures. Subsequently, the National Convention's Work Committee revoked the delegacy of the NLD delegates on the ground that they had absented themselves on two occasions without permission. The Chairman of the Convention invited the remaining delegates to continue their work in accordance with the original arrangements. This expulsion was, in the view of the Special Rapporteur, arbitrary and has highlighted the lack of any meaningful representation at the Convention. The members of parliament elected in 1990 now constitute less than 3 per cent of the total current delegates to the Convention and none are from NLD, the party which had won the elections and which would otherwise have been the government returned by the will of the people.

29. The procedures for the working of the Convention have been controversial and not conducive to any genuine attempt to consider properly the views of delegates. The issues to be raised and the papers to be presented are rigidly controlled and supervised at the level of the National Convention Convening Commission, the chairmen of the eight discussion groups and at group discussion level as well. Freedom of expression in general, and political debate in particular, in the National Convention compound seems to be severely restricted and circumscribed. Delegates cannot distribute discussion papers among themselves. All papers have to be distributed to the chairmen of the groups. The chairmen scrutinize the contents and, if the statements are found not to comply with the established principles, the relevant parts are deleted; only then will the papers be read at the group meetings. When the proposed statements are to be read before the plenary, they have to be submitted again for scrutiny by the Work Committee. Moreover, it appears that delegates are not totally free to meet other delegates and to exchange their views freely inside the compound. They are reportedly not entitled to distribute leaflets, wear badges or bring any written or printed materials to the Convention without the prior approval of the National Committee.

D. Non-conformity of the legal framework with international norms

30. Article 21 of the Universal Declaration of Human Rights proclaims, in paragraph 1, that everyone has the right to take part in the government of his country, directly or through freely chosen representatives. It further proclaims, in paragraph 3, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections.

31. In essence, the assumption of all governmental powers by SLORC in 1988 constituted, as mentioned earlier, a break from constitutionality and legal continuity and further constituted a departure from the norms governing the enjoyment of political rights proclaimed in article 21 of the Universal Declaration. There could, arguably, have been some legitimacy in the assumption of power by SLORC, without the consent of the people, in circumstances which could be said to have amounted to a state of public emergency threatening the life of the nation. In any event, as its name indicates, an emergency is only temporary and cannot be said to last longer than a given situation requires. It is not uncommon, however, to have a civilian government managing a state of emergency, with the military playing an important role but still under the policy directions of the civil authorities. In the case of Myanmar, general elections took place so that a civilian government was chosen as a result of the freely expressed will of the people. The will of the people has remained frustrated for a period which is now in excess of five years. The question arises, with growing urgency, as to whether any juridical legitimacy that could, arguably, have been derived from past acquiescence in the assumption of power by the Military Forces can any longer provide a defensible basis for the continued maintenance of a non-constitutional system based on the assumption of martial powers, having such an unfavourable impact on human rights in the context of generally accepted international norms and the obligations undertaken by Myanmar.

32. SLORC gave the explanation, in Declaration No. 1/1990, that the People's Assembly could not be convened until a constitution was drafted and that it was the responsibility of the elected representatives to draft the constitution. However, it has not been left to the People's Assembly, returned by the people, to draft the Constitution and determine the principles on which it should be founded. Instead, a National Convention, consisting of delegates who in their overwhelming majority were not returned by the people, was devised some three years after the general elections of 1990. Two features of this Convention require to be mentioned. First, it was expressly mandated to adopt principles on the basis of which a democratic constitution would be drafted by the People's Assembly. Already, however, the mandate contained the principle that the Armed Forces would have a leading political role in the constitutional system. It is questionable whether this principle would be consistent with article 21 (3) of the Universal Declaration of Human Rights, which requires that the will of the people "shall be expressed in periodic and genuine elections" and that although the Armed Forces can be understood to be part of the State's services, it cannot be understood how they could be periodically elected. In any event, this principle could not be said to have been a political principle approved by the people in the general elections of 1990. Second, three more years have gone by

since the National Convention started its work and from all accounts it would appear that detailed provisions are being worked out for a constitution and not merely general principles which could be considered by the People's Assembly in the drafting of the constitution.

33. With regard to the proceedings of the National Convention, the main criticisms which have been variously made have centred around, first, the composition of the delegates and the absence of genuine and proper representation of members returned at the general elections; second, the restrictions imposed upon the delegates and the restrictive procedures which are required to be followed; and third, the restricted opportunity for meaningful discussion, including the absence of free debate and exchange of ideas. These features do not appear to constitute the necessary steps towards the restoration of democracy so as to respect the will of the people as expressed in the democratic general elections held in 1990 and do not conform to the rights to freedom of thought and expression in accordance with international norms necessary for the exercise of political rights, especially when a constitution is being formulated.

E. Remedial measures for the re-establishment of constitutionality and the democratic order

34. Given the non-conformity of the present legal framework with international norms, coupled with steps taken over the past six years which have been adverse to the implementation of the democratically expressed will of the people at the general elections, necessary measures implementing the resolutions of the General Assembly and the Commission on Human Rights become the more urgent for the re-establishment of constitutionality and democracy. Some work has been done in the proceedings of the National Convention. But those proceedings were themselves flawed by the unrepresentative character of the Convention and its other features relating to its mandate and restrictive procedures. In the Special Rapporteur's considered view, a dialogue should be engaged between the present regime and the leaders of political parties which have been returned by the people, with a view to working out such measures as might be considered best to bring the democratic process engaged in the 1990 elections to fruition.

IV. IMPACT OF MYANMAR LAW ON HUMAN RIGHTS

35. In Myanmar, several laws criminalize or adversely affect freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. The most commonly employed laws banning the enjoyment of civil and political rights and suppressing dissent against SLORC have been the 1923 Official Secrets Act, the 1950 Emergency Provisions Act, the 1957 Unlawful Associations Act, the 1962 Printers' and Publishers' Registration Law, the 1975 State Protection Law (Law to Safeguard the State from the Dangers of Destructive Elements) and Law No. 5/96 Protecting the Stable, Peaceful and Systematic Transfer of State Responsibility and the Successful Implementation of National Convention Tasks Free from Disruption and Opposition.

36. Moreover, these laws are backed up by a series of orders and other emergency laws still in force which provide the basis for detention in most cases. Order 1/1991 prohibits civil servants from participating in politics and their dependants or persons under their guardianship from participating directly or indirectly in activities aimed at opposing the Government; Order 2/1988 prohibits the assembly of five or more persons; and Order 3/1990, relating to the right to assemble and campaign, forbids criticism of the authorities or the defence forces, insults to SLORC and solidarity of the national races, which may be punishable by up to three years in prison and a fine. Order 6/1990 of October 1990, bans all unlawful Sangha (Buddhist Monk) organizations, except the nine sects of Sanghas, and has made action possible against political parties for the "misuse" of religion for political purposes.

A. Extrajudicial, summary or arbitrary executions

37. The Special Rapporteur has been informed that, since January 1993, based upon SLORC Order No. 1/933 1992, death sentences passed between 18 September 1988 and 31 December 1992 have been commuted into life sentences. Furthermore, the Special Rapporteur has this year not received information indicating that an explicit or systematic government policy encouraging summary killings would exist. However, the Special Rapporteur is concerned about reports alleging instances of killings of civilians or insurgents by members of the Myanmar army in the insurgency areas.

38. The reports received by the Special Rapporteur often concern minority-dominated areas where the persons allegedly killed were often accused of being or cooperating with insurgents, or as a revenge for acts by insurgents in the area.

39. On 18 October 1995, a section of MI 18 of Buthidaung township, about 80 miles north of Akayb, in Arakan State arrested five Rohingya youths from different villages in the township for allegedly having links with insurgents. During interrogation they were allegedly severely tortured. Later all five were reportedly executed behind a hill west of the MI office.

40. On 21 March 1996, more than 50 villagers were reportedly arrested in Bawdi Gone village, Thantaung township. The village headmaster was accused of cooperation with the Karen National Union and the All Burma Students Democratic Front, and later killed.

41. Other reports received by the Special Rapporteur concern cases where persons were allegedly killed as punishment because they could not provide goods or services demanded by army troops, including labour, food, money or arms.

42. The Special Rapporteur has also received allegations that persons have been killed because they have refused to be relocated. In the beginning of May 1996, villagers in the Chiang Tong area were told to move, otherwise they would be shot. Five villagers returned from the place to which they had been relocated to Kung Sar village with bullock carts to fetch some rice and were allegedly shot by Battalion 99 while loading the carts.

B. Torture and other cruel, inhuman or degrading treatment

43. The complete prohibition of torture and other cruel, inhuman or degrading treatment or punishment is embodied in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. In addition, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment describes such acts as an offence to human dignity. In accordance with this Declaration, no State may permit or tolerate such acts. Torture, which is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment, is defined in article 1 of the Declaration as follows: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

44. Furthermore, article 3 of the Declaration states that "exceptional circumstances" may not be invoked as a justification of torture or other similar treatment. This indicates that the rules of international law set forth in article 4 of the International Covenant on Civil and Political Rights, which prevents derogation from article 7 even in times of emergency, constitute jus cogens and may therefore be invoked in respect of any State member of the international community, regardless of whether or not it has contracted any specific treaty obligations.

45. In this connection, the Special Rapporteur expresses his concern at the large number of cases of torture and other ill-treatment attributable to the Myanmar armed forces through its military, intelligence and other security personnel. Torture and other cruel, inhuman or degrading treatment or punishment are regularly employed against civilians living in insurgency areas, against porters serving in the army and in working sites where forced labour is practised. Torture and ill-treatment appear to be common means of punishment and of obtaining information or confessions, in particular from persons suspected of anti-government activities.

46. With regard to habitual methods of torture, they are the same as those described on previous occasions by the former Special Rapporteur. It is a combination of methods of physical and psychological torture. In the case of primarily physical methods, the most frequent are severe beatings with canes or rifle butts, burning of body parts, stabbing, near suffocation, shackling and sexual abuses. Other frequently used methods are forcing the victim to adopt a fixed posture, depriving him of food and water. In the case of psychological methods of torture, the reports received by the Special Rapporteur refer to death threats against the victim or his family. It is alleged that villagers in Kru Gyee village who were suspected of hiding army deserters were arrested and tortured in January 1996 by the troops of LIB Commander Kyaw Lin. One villager was beaten so badly that blood came out of his ears. The soldiers then poured hot water on his body. A number of other villagers were beaten unconscious.

47. The Special Rapporteur continues to receive numerous reports indicating that army troops subject porters to torture and ill-treatment in the course of their duties.

48. A 20-year-old Karen from Bawgali village, Than Daung township, Karen State, was reportedly forced to join Infantry Battalion No. 48 in June 1995 as a porter. Carrying dried rations and mortar shells, he allegedly had to go in front of the troops in order to detect possible mines. He reportedly stepped on a landmine and was seriously wounded, was left behind by the soldiers and later died from the injuries. According to the testimony of a former SLORC soldier, his senior officer ordered him to beat the porters who could not keep up with them. If he did not beat them, the officer would beat him. Once he was ordered to beat a 52-year-old porter until he died, another time to shoot a porter who tried to escape and to leave him wounded without medical treatment.

49. Other forced labourers are also reportedly subject to conditions and treatment amounting to torture or inhuman treatment. According to allegations received, a man aged around 65 years who worked at the Ye-Tavoy railway construction was kicked and beaten with rifle butts and fists by army soldiers because he took a rest under a tree. The beating stopped only when other villagers explained that he was sick and therefore weak. The forced workers at the railway construction sites live in overcrowded conditions, and are not provided with proper shelter or sanitation. Pregnant women have reportedly worked and given birth at the labour camps, no care or protection of the infants being provided after their birth.

50. Village headmen are also said to have been subject to torture or ill-treatment in cases where they have not been able to provide army troops with the requested goods or porters. In July 1995, a village elder in Thein p'Lein village, Kawkareik District was kicked and beaten with sticks and a rifle since she could not obtain the required porters as all villagers were away on their farms. The beatings caused a miscarriage. Two villagers were also severely beaten when they tried to protect the village elder.

51. The Special Rapporteur has received allegations of sexual assault and rape of women by army troops. A 15-year-old girl from Kywe Thone Nyi Ma was reportedly raped so many times by soldiers at a railway worksite that she bled to death. Some foreigners are said to have found her unconscious and brought her by car to Tavoy hospital, but she reportedly died on the way. The soldiers at the worksite had reportedly also raped a number of other women at gunpoint.

C. Arbitrary arrest and detention

52. With regard to arbitrary arrest and detention, the Special Rapporteur has received many reports of such violations. An examination of the laws in force shows that such violations may easily occur. Further, a multitude of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing grossly disproportionate penalties and authorizing arrest and detention without judicial review, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions are arbitrary when measured by international standards.

53. The 1950 Emergency Provisions Act allows the imprisonment for up to seven years of any person who either "infringes upon the integrity, health, conduct and respect of State military organizations and government employees", "spreads false news about the government" or "disrupts the morality or the behaviour of a group of people". One such example, among many others, is the following. On 15 August 1996, Dr. Hlaing Myint, a businessman and NLD activist, and U Kyaw Min, an elected member of Parliament, and Maung Maung Wan, a youth activist, were sentenced to seven years imprisonment under Section 5 of the Emergency Act for allegedly trying to foment unrest amongst the students.

54. The 1975 Law to Safeguard the State Against the Dangers of Those Desiring to Cause Subversive Acts is also used selectively by SLORC to carry out indiscriminate and arbitrary arrests and detention. Under this law, the Council of Ministers is authorized under section (7) of the Law "to pass an order, as may be necessary, restricting any fundamental right of a person if there are reasons to believe that any citizen has committed or is committing or is about to commit any act which infringes the sovereignty and security of the State or public peace and tranquillity". The same Law further stipulates in sections 13 and 14 the possibility to continue restraint for "a period not exceeding one year at a time up to a total of five years". Perhaps the most illustrious case is that of Daw Aung San Suu Kyi. The Government of Myanmar had previously reported that she had been deprived of her liberty and effectively placed under house arrest on 20 July 1989 for an initial period of one year according to section 10 (b) of the above-mentioned Law. According to section 14 of the said Law, the restraints on Daw Aung San Suu Kyi were continued year by year for the maximum of five years as stipulated in the Law.

55. Detention on the presumption of what a person might do does not comply with international standards of justice. Article 11 (1) of the Universal Declaration of Human Rights stipulates: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence". In addition, this Law, by being applied in the case of Daw Aung San Suu Kyi, in an ex post facto manner was also inconsistent with international legal standards. Indeed, article 11 (2) clearly stipulates "Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

56. Several persons have also been arrested and detained under the 1957 Unlawful Associations Act. This law permits the imprisonment for up to five years of any person who has been a member of, or contributes to, or receives or solicits any contribution towards any association "which encourages or aids persons to commit an act of violence or intimidation or of which the members habitually commit such acts; or which has been declared unlawful by the President of the Union". Moreover, anyone managing or assisting in the management of an unlawful association, or who promotes or assists in promoting a meeting of such an association, can be subjected to similar punishment. On 16 May 1996 six students from Yangon University were reportedly arrested in Rangoon for organizing people in support of the planned NLD congress. Among those arrested were Ye Kyaw Zwar, a technology student, and Kyaw Kyaw Htay, a first-year English major.

57. Another provision which has also been used to arrest individuals is section 122 (1) of the Penal Code under which anyone found guilty of "high treason" can be punished with death. Several persons have received long-term sentences under this provision.

58. On 20 August 1996, Do Htaung, an elected member of Parliament from Kale-1 Sagaing Division, Khun Myint Htun, an elected member of Parliament from Mon State, Khin Maung Thaung, a youth activist Kyaw Htwe, Kyi Aung, Tin Maung Aye, Kyaw Thaung, Aung Kyi, U Pwa, U Hla Soe, MP elect from Minbu-2, Magway Division, Than Htay, Khin Maung Myint, Dr. Khin Ma Kyi, Dr. Khin Soe Win and U Sein Myint are reported to have been sentenced to seven years imprisonment under Act 122/2 for high treason on the ground that they had contacts with Burmese dissidents in India. Myanmar television announced their arrests and sentences, saying that the group had conspired to send members for training in political defiance with exiled colleagues in India led by Tint Swe, had distributed leaflets attacking military-organized constitutional talks and had made plans to open a secret office in the town of Monywa. Khin Maung Thaung, U Kyi Aung and Kyaw Htwe were reportedly arrested for possessing a critique of the National Convention made by the Burma Lawyers' Council, an expatriate opposition group. According to the same report, Kyaw Thaung, U Pwa and U Aung Kyi were apparently arrested for possessing "political letters" and material from "illegal organizations".

59. On 14 June, a 27-year-old NLD activist Tin Hlaing, a bodyguard of Daw Aung San Suu Kyi, was arrested for spreading "a disinformation". On 20 August, he was reportedly sentenced to seven years imprisonment under Act 122/2 for high treason.

60. These laws are inconsistent with a number of principles enshrined in international human rights instruments. Article 29 (2) of the Universal Declaration of Human Rights stipulates that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

61. The Special Rapporteur holds the view that none of the acts for which these persons have been detained could be construed as a threat to national security. It would seem that the laws are simply used against citizens exercising their legitimate rights to free expression, free association and peaceful political activities. Mere criticism of the Government or SLORC, or of the National Convention procedures, as well as political dissent generally, have been made into criminal acts.

D. Due process and the rule of law

62. The notions of "due process of law" and "rule of law" are integrally linked. The rule of law is poorly served and undermined if the requisites of due process are not respected, and the notion of due process becomes meaningless if the rule of law is not secure. These two notions are defined, in particular, in articles 10 and 11 of the Universal Declaration of Human Rights. Further, the rule of law requires more than respect for procedural rights: it requires

respect for all rights in order to provide protection against the risks of arbitrariness.

63. While judicial guarantees set out in the now defunct Constitution, according to the Government, do not apply, through correspondence received by the Centre for Human Rights, the former Special Rapporteur had been informed by the Government of Myanmar that those elaborated in the Code of Criminal Procedure applied in all cases heard in civilian courts even when the detention was carried out under a SLORC order or an emergency regulation. The Code of Criminal Procedure provides that an arrested person may only be detained for 24 hours before being brought before a judge, who decides on the remand of the suspected person up to 30 days, or his release. The rights of an accused person standing trial are guaranteed by the Evidence Act (under which the accused may cross-examine witnesses for the prosecution) and by various provisions of the Code of Criminal Procedure, including the Court Manual. The accused has the right to be represented by counsel of his own choosing. If he cannot afford to retain a defence counsel, a court-appointed counsel is assigned to him if the offence carries the death sentence, otherwise not. The accused is tried at a public hearing (unless the law requires otherwise).

64. However, the Special Rapporteur has received numerous reports alleging the absence of counsel during trial, the absence of time and facilities to prepare a defence, and all other attendant guarantees. The examination of a few reported cases will help illustrate the problems.

65. It was reported that U Win Htein was arrested at midnight on 19 May 1996. When he asked whether there was a warrant for his arrest, he was told that a warrant was unnecessary because it was already decided how he was going to be sentenced. U Win Htain, and other members of NLD arrested with him, were tried on 7 August 1996. Although NLD sent lawyers to Insein prison, nobody was produced for trial. The lawyers were told that there was to be no trial that day and that they should not wait. NLD lawyers became aware that a trial was taking place when they saw the Magistrate who normally presides over these sessions, U Hla Phyu, leave Insein prison. When they caught up with him at Insein Court, they were told by the Magistrate that he could not tell them what sentence had been passed and that the lawyers should apply officially for a copy of the trial proceedings.

66. U Win Htain was arrested for arranging a meeting with NLD members U Poe Aye and his son Maung Htein Lin who made a videotape of the dry season paddy yield. It was also reported that obstacles had been placed before NLD when they tried to exercise their right of appeal. Families of the detained were also denied visiting rights and the defendants were tried in a secretive way.

67. Another reported case of an unfair trial has been brought to the attention of the Special Rapporteur. On 4 January 1996, a group of several comedians, celebrating Independence Day, performed dances and songs at Daw Aung San Suu Kyi's house. A few days later, the members of the group were arrested in Mandalay by officers from Military Intelligence Unit 16, for having allegedly performed a satire of the authorities. The following persons were arrested: U Pa Pa Lay, U Lu Zaw, Ma Hnin Pa Pa, Myodaw Win Mar, U Htwe, U Tin Myint Hlaing, U Sein Hla and U Win Htay. Two other members of the group,

Daw Myaing and Ma Yin Tin Swe, were reportedly arrested on 11 January. Another two persons, U Myint Thein and U Aung Soe, who had helped arrange the performance, were also arrested on 12 January 1996.

68. U Pa Pa Lay and U Lu Zaw were charged under section 5 (e) of the 1950 Emergency Provisions Act, while U Htwe and U Aung Soe were charged under section 109. All of them have been sentenced to seven years imprisonment for "spreading false news". According to reports received by the Special Rapporteur, they were not allowed any legal representation and witnesses have been prevented from attending the trial in order to testify and provide evidence. The eight remaining members of the group were released a month later.

69. It was reported that Ko Khin Tun was arrested on 6 November 1995 for having taken a photograph of a person serving a sentence in Insein prison whom he saw ploughing a vegetable plot outside the prison, while he was on his way to visit him. He was reportedly charged under section 5 (d) and section 42 (prison regulations). He was not allowed any contact with his family. Although he asked for the services of a lawyer from the time he was first tried, his request was not granted. Only 70 days later, on 17 January 1996, the last day of his trial, was he permitted the services of a lawyer. On that day, the crucial evidence, the film concerned, could not be produced. Nor was the member of the prison staff, who was the principal witness for the prosecution, present for cross-examination. Further, Ko Khin Tun was not given an adequate opportunity to defend himself. He was reportedly sentenced to four years and three months imprisonment.

70. Virtually all reports received by the Special Rapporteur relate to similar violations, in addition to the fact that there is no proportionality between offences committed and punishments applied, particularly in political or related cases. An obvious example reported to the Special Rapporteur is that of an NLD member, U Saw Hlaing, who was arrested by the police following a minor car accident. He was later reportedly sentenced to five years imprisonment at Kyungon police station for causing "grievous bodily harm" under section 338 of the Myanmar Penal Code after a summary trial. He was allegedly not allowed visits by a lawyer or family members.

71. The conclusions that can be drawn from the reported cases are that neither is due process of law generally respected nor is the rule of law upheld. On the contrary, the information received reveals a consistent, if not routine, failure to respect due process and the rule of law. This is no doubt the result of rule under martial law without any constitutional legitimacy where the content and application of laws guaranteeing individual rights are overtaken by a martial policy of repressing and punishing political dissent or any risk of it.

E. Prison conditions

72. Given the fact that the former Special Rapporteur was denied access to prison cells and could not meet with any detainee while visiting Myanmar last year, and given the fact that the Government of Myanmar rejected the International Committee of the Red Cross (ICRC) standard requirements for visits to places of detention, the Special Rapporteur can only rely on the complaints

of former detainees and their families, which strongly indicate that Myanmar prison conditions do not comply with the Standard Minimum Rules for the Treatment of Prisoners established by the United Nations in 1955 and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957.

73. The reports received suggest that ill-treatment is common. Prisoners are allegedly tortured and subjected to cruel, inhuman or degrading treatment and punishment such as beatings, various forms of water torture and electric shock treatment. Prisoners breaking the prison rules are said to be subjected to harsh punishments, including beating, being kept in the hot sun for long periods and being forced to crawl over sharp stones. The treatment of the political prisoners in Insein prison is reportedly especially harsh. They are allegedly subjected to torture both before and after sentencing and are liable to be sent to solitary confinement in the so-called "police dog cells" (a small cell where police dogs are normally kept), without any bed or bedclothes.

74. The Special Rapporteur notes with concern reports of very poor health and sanitary conditions in Myanmar prisons. Prisons are reportedly regularly overcrowded. It is alleged that prisoners receive inadequate food in amount and quality and that they are allowed insufficient means to keep up hygiene. There is reportedly also a lack of proper medical care and adequate medical provision. The Insein prison hospital reportedly has only one doctor, who does not himself carry out examinations or prescribe medicines; this is done by prisoners with only a rudimentary knowledge of medicine. The hospital provides few medicines. Food and medicines brought by families are said to be often confiscated by the prison authorities. A number of prisoners reportedly suffer from contagious and serious diseases, such as dysentery and malaria. There is also a growing AIDS problem in Myanmar prisons.

75. A prisoner named U Htwe who is currently detained in Insein prison is said to be suffering severely from malaria and is not receiving adequate treatment.

76. On 2 August, U Hla Than reportedly died at Yangon General Hospital. According to the prison authorities, his death was caused by tuberculosis and an HIV infection. The Special Rapporteur has been informed that needles which are not properly sterilized are used in the prison hospital, and that there is a drug problem in the prisons, which also contributes to the spread of HIV.

77. Mr. James Leander Nichols, who had been arrested in early April for illegal possession of communications equipment (telephones and fax machines) was sentenced to three years imprisonment on 18 May 1996 and died in custody on 22 June 1996. He had allegedly been deprived of sleep during long interrogations prior to his death. Mr. Nichols was 65 years old and suffered from heart problems and diabetes. The Myanmar authorities, in a "press statement" issued on 16 July 1996, denied that he was tortured and stated that he died from natural causes due to a stroke and heart attack.

78. The Special Rapporteur has also received reports of prison labour. This is claimed by the Government to be a way of reintroducing the prisoners into society. Such camps for prisoners reportedly exist inter alia in the Kabow valley in Tamu township in Sagaing Division. The camps include Wet Shu, Thanun and Yezagyo, and their conditions are said to be extremely bad. The Special

Rapporteur notes that prison labour may only be imposed as a consequence of a conviction in a court of law. Allegations indicate that this condition is not respected. The harsh prison conditions, especially the inadequate health care, have allegedly led to the death of a number of prisoners in prison labour camps.

79. At the labour camp in Ywangan, Hanmyinmo Road, Sagaing Division, 400 prisoners reportedly died within a month. In Taungzun, Mopalin Quarry, Mon State, 30 per cent of the prisoners have reportedly died. It is said that 108 out of 530 prison inmates died from starvation, sickness and hard work during one year in Boke Pyin prison labour camp. About 500 prisoners are said to be kept at the 30-Mile labour camp, where they break rocks into pieces for the construction of the railway in Yebyu township.

80. The Special Rapporteur is also concerned about the case of U Pa Pa Lay, who is reportedly gravely ill in Myitkyina prison in Kachin State. U Pa Pa Lay and U Lu Zaw were reportedly transferred to a labour camp at Kyein Kran Ka near Myitkyina in early April 1996. They were forced to work with iron bars shackled across their legs, and had lost a considerable amount of weight. U Lu Zaw has been transferred from the labour camp to Katha prison, near Myitkyina in Kachin State. U Aung Soe and U Htwe were initially sent to a labour camp seven miles from Myitkyina; in May 1996, they were reportedly moved to Sumprabom in northern Kachin State, where they were forced to break rocks.

81. It has also been alleged that convicts are taken from prison to serve as porters, often shortly before their sentences are to expire, and then forced to work under very poor conditions long after they should have been released from prison. About 500 prisoners and about 1,000 civilians are said to be kept as labourers at the 30-Mile labour camp. The prisoners break rocks into pieces for the construction of the railway in Yebyu township. According to reports of the villagers, about 40 of the prisoners working on the Ye-Tavoy railway have died during construction work. Only some of the sick or injured prisoners are reportedly taken to the prison hospital. Also prisoners from Zin Bar camp, where about 400 prisoners are reportedly detained, are said to have participated in the building of the Ye-Tavoy railway in 1995.

82. Freedom of expression is denied in Myanmar prisons. Prisoners are reportedly denied reading and writing material. One prisoner, who was found with a piece of paper, was allegedly placed in shackles in a "police dog cell", for one month. Prisoners suspected of having sent letters with allegations of ill-treatment and poor conditions to the former Special Rapporteur, Professor Yokota, have reportedly been ill treated since November 1995 in Insein prison. On 28 March 1996, 20 prisoners implicated in the drafting of the letter, as well as in the hiding of three radio sets and distributing a clandestine newspaper within the prison, were allegedly tried and given additional sentences of 5 to 7 years. Among them were newspaper editor Win Tin and editors of the Bay Bhuhlwe magazine, Myo Myint Nyein and Sein Hlaing. Zaw Myo Aung, General-Secretary of Ma Ka Tha Pha, the National Students' Organization, was reportedly sentenced to three months solitary confinement in a "police dog cell" in Insein prison for breaking prison rules, the reason being a dispute on philosophy with another prisoner held after 9 p.m. and the fact that he said that "he was not afraid to tell the truth to any one even if he was a prison official", which was considered lack of respect for prison authorities.

F. Freedom of opinion

83. The freedom of thought, opinion and expression are embodied in articles 18 and 19 of the Universal Declaration of Human Rights. These three freedoms are obviously interlinked since freedom of expression is designed to give effect to the freedoms of thought and opinion.

84. The Special Rapporteur has found that freedom of expression in Myanmar is seriously restricted by several combined laws which are difficult to reconcile with article 19 of the Universal Declaration on Human Rights. These laws affect not only freedom of expression but also freedom of information through any of the media.

85. The Myanmar media (television, written press and radio) continue to be subject to governmental censorship and are largely used as instruments to propagate governmental points of view.

86. Under the 1962 Printers' and Publishers' Registration Law, periodicals, magazines and films must be submitted to the "Press Scrutiny Board" prior to being printed or, in some cases, distributed. Authors, editors, publishers and distributors convicted for having transgressed its provisions face harsh penalties, which have been increased in June 1989 by SLORC Order 16/89 to a maximum of seven years' imprisonment for each infringement of the law and/or fines of 30,000 kyats.

87. Another law which restricts freedom of expression is the Myanmar Wireless Telegraphy Act. This law which was amended on 22 October 1995 (Amendment Law No. 15/95), stipulates that whoever possesses any wireless telegraphy apparatus without a licence shall be punishable with imprisonment for a term which may extend to three years or a fine which may extend to 30,000 kyats, or both. As mentioned in paragraph 27 above, Mr. James Leander Nichols, a former consular representative of some States, was arrested in early April for illegal possession of communications equipment (telephones and fax machines). He was sentenced to 3 years imprisonment on 18 May 1996 and died in custody on 22 June 1996.

88. Under the 1985 Video Law, all videos must also be submitted to the Video Censorship Board for scrutiny. Those involved in the making, copying or distribution of videos have been threatened with prison terms of up to three years under the Law. On 19 May 1996, U Win Htein was arrested for arranging a meeting with NLD member U PO Aye and his son Maung Htein Lin, who had made a videotape of the dry season paddy yield. This was interpreted as a disruption of a State agricultural project, agitation and spreading disinformation about the poor rice harvest. They were reportedly tried on 7 August 1996 and charged under section 5(e) of the 1950 Emergency Provisions Act for having spread disinformation about the rice harvest.

89. Apart from censorship, the Government of Myanmar continues to intimidate its citizens and discourages them from exercising their fundamental right to freedom of expression by, first, criminalizing its exercise and, second, prosecuting "offenders".

90. It was reported that in May 1996, a monk named U Kaythara was arrested near Bandoola Park for writing on the palm of his hand that SLORC should have a dialogue with NLD and held a piece of paper also saying that SLORC should start a dialogue. It was further reported that his trial took place on 15 August and that he was sentenced to seven years imprisonment under section (5)j of the 1950 Emergency Provisions Act.

91. On 27 January 1996, in Yangon, six members of the Insein township branch of NLD were allegedly arrested by Military Intelligence Unit 6 for having written a poem commemorating the 1991 death in custody of U Tin Maung Win. The men were U Win Naing (32), U Khin Maung, U Thein Tun (56), lawyer U Maung Maung Lay (50), U Aung Myient (34) and U Htay Kywe (40). U Maung Maung Lay and U Aung Myint were released in February and U Khin Maung on an unknown date.

92. A group of four political activists were reportedly arrested for the possession of a critique of the National Convention by the Burma Lawyers' Council, which is an expatriate opposition group. Another group of three people were arrested for possessing letters about politics and materials from illegal organizations. Their dates of arrest and places of detention are unknown. All seven men, who are from Mandalay and Sagaing Division, were scheduled to appear in court on 19 June, but it is not known if they were charged and sentenced at that time.

93. On 23 September, the government press announced that nine students had been arrested for distributing leaflets outside Daw San Suu Kyi's house on charges of disrupting the nation's peace and tranquillity.

94. In Myanmar, the exercise of the freedom of opinion, particularly in political matters, is currently violated by the ban on the expression of any kind of political dissidence for the duration of the period of transition or drafting process of the new constitution at the National Convention, which, under the relevant circumstances, has no time-frame. The situation has given rise to widespread friction between the authorities and the various bodies of opinion seeking to establish a political position for themselves in the public life of Myanmar. In order to prevent any dialogue on the political situation which could take place outside the National Convention, the Myanmar authorities published, on 7 June 1996, a law called "The Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbances and Oppositions". Under this law, any organization or person who incites, demonstrates, delivers a speech, makes an oral or written statement and disseminates anything in order to "undermine the stability of the State, community peace and tranquillity and prevalence of law and order", "national reconsolidation" or "undermine, belittle and make people misunderstand the functions being carried out by the National Convention ..." shall be subject to imprisonment for a term of a minimum of 5 years to a maximum of 20 years and may also be liable to a fine. This Law also forbids anyone or any organization to carry out, draft "the functions of the National Convention" or draft or disseminate the "Constitution of the State without lawful authorization".

G. Freedom of assembly and association

95. With regard to the issue of freedom of association, violations take two principal forms: restrictions on association of a political nature, and the right to form and join independent trade unions.

96. The repressive political climate in Myanmar since 1990 has made it virtually impossible for opposition parties to function and they have been severely hampered through constant pressure and arrests, with some members of Parliament in prison and some in exile. This is a result of the existence of a complex array of security laws which provide the Government with sweeping powers of arbitrary arrest and detention.

97. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been increasing harassment of the party by SLORC, including arrests of dozens of party members over the last six months. The Special Rapporteur has already mentioned the cases of NLD activists who have been detained for possessing videotapes of Daw Aung San Suu Kyi's weekend speeches, others for a satire of SLORC in an NLD-sponsored performance, or others for writing a poem commemorating the death in custody of an NLD colleague.

98. This harassment and the arrests culminated during the third week of May 1996 when more than 200 NLD members, among whom many had been elected to the country's parliament in the May 1990 elections, were arrested by Myanmar authorities in order to prevent them from attending a meeting organized by NLD leaders in Daw Aung San Suu Kyi's house. The meeting was to take place from 26 to 29 May 1996 to mark the sixth anniversary of the NLD victory in the 1990 elections. The arrests have been widely seen as a pre-emptive attempt by SLORC to prevent the meeting from occurring. While most of the persons detained were released a few days later, the Centre for Human Rights has obtained the names of 27 persons who are believed to remain in custody but how many of the total of the detained persons have been freed cannot be confirmed. The planned NLD meeting took place from 26 to 28 May at the compound of Daw Aung San Suu Kyi; however, only 18 delegates were able to attend, as the rest had been detained. No barricades were erected in front of the compound, and people were allowed to pass in and out freely.

99. On 23 May 1996, the United Nations High Commissioner for Human Rights met with the Permanent Representative of Myanmar to the United Nations at Geneva, expressing his concern over the arrest and detention of members of NLD. On 28 May 1996, following the meeting, the High Commissioner issued a press release in which he expressed his concern with regard to the recent arrest or detention of more than 100 members of the National League for Democracy. The High Commissioner drew the attention of the Ambassador to the fact that the freedom of expression was a basic and internationally recognized human right standard and expressed the hope that the people arrested or detained would be allowed to express freely their views and opinions and demonstrate peacefully. The High Commissioner therefore asked the Government of Myanmar to do its utmost to ensure the full enjoyment by all of the freedom of opinion, expression and association, and to keep him informed of any further developments.

100. The Government of Myanmar has not brought charges against the members of the group. Myanmar officials claimed in numerous interviews and press statements that the elected members of parliament and other NLD members were not arrested but were instead called for questioning and were treated well. In a letter dated 23 May 1996 addressed by the Permanent Representative of the Union of Myanmar to the United Nations at Geneva for the attention of the Centre for Human Rights, the Government justified its action as follows:

> "The threat of breakdown of law and order only brings about possibilities of the disruption of studies once more for students who are only now getting into the rhythm of an uninterrupted pursuance of education, the creation of anxiety in the minds of the populace, the hindrance of business and trade, as well as putting a check on the momentum of development projects undertaken by the Government. The Government is convinced that it has a firm duty that progress goes on without a break.
>
> "With these possibilities of a breaking down of the peace and stability of the country in mind, and in order to prevent a repeat of the unrest that occurred in 1988, the Government of Myanmar has had to undertake what it sees as the best means of action for all the people and the country. Those who have been called in for questioning have not been arrested, nor have they been put into prisons or detention centres. They have instead been lodged at guest houses and given good treatment while the questioning is taking place".

101. The Special Rapporteur is aware that since the release of Daw Aung San Suu Kyi, she is allowed, with her colleagues, to make regular weekly appearances at her home in Yangon and to speak to Myanmar citizens who gather there every weekend. However, the law prohibiting public gatherings of more than five people (Order 2/1988) remains in force. In recent weeks, it was reported that the military intelligence has started to arrest people attending Daw Aung San Suu Kyi weekend speeches delivered at her gate. On 13 June 1996, Maung San Hlaing, also known as Tin Hlaing or Eva, one of Daw Aung San Suu Kyi's aides, was arrested after he left her home compound for the first time in 20 days. Apparently, on 14 and 15 June, officers from Military Intelligence Unit 12 searched his family's home and confiscated videotapes and photographs.

102. According to information received by the Special Rapporteur, military intelligence personnel have used video recordings of the weekend meetings to identify participating civil servants or members of their families, and has then threatened them with dismissal if they continue to attend the meetings.

103. In connection with the meeting referred to in paragraph 98 above, on 28 September 1996, scuffles occurred between the crowd which had gathered outside Aung San Suu Kyi's compound, and Riot Control Forces, who responded by beatings and forcing about 100 people, at gun point, onto military trucks. Heavily armed police blocked the roads leading to Daw Aung San Suu Kyi's house, some of them reportedly entering the compound and taking away her maid, and the Government issued a statement ordering her not to leave her house for three days. Daw Aung San Suu Kyi thus effectively remained in house arrest. The signboards of the NLD headquarters had been taken down and replaced by signs

saying that NLD was no longer in that place. Since no one was able to reach Aung San Suu Kyi's house, the usual weekend speeches could not take place.

104. On 27 September 1996, the United Nations High Commissioner for Human Rights met with the Permanent Representative of Myanmar to the United Nations at Geneva. He expressed his concern over the recent arrest or detention of the NLD members and his hope that the people arrested or detained would be allowed to express freely their views and opinions and demonstrate peacefully.

105. In a letter addressed, on 1 October 1996, by the Permanent Representative of the Union of Myanmar to the United Nations at Geneva for the attention of the Centre for Human Rights, the Government justified its action as follows:

> "For stability of the State, community peace and tranquillity, security authorities curbed a bid by the NLD to hold a meeting with a gathering of people from 27 to 29 September 1996.
>
> "On 27 and 28 September, security authorities called in temporarily for questioning some persons from the NLD in Yangon and some townships who were going to assemble for the Congress. There are altogether 159 persons - 136 in Yangon and 23 in other townships. All of them were accommodated at guest houses temporarily, some of them are on their way back to their home from those guest houses. Assembling of people at Daw Suu Kyi's house on University Avenue and the Party's office of Shwegondine Road for the purpose of holding the Congress was restricted".

106. In a prelude to the September events, the Government, in a press conference held on 31 August, accused Daw Aung San Suu Kyi of "having secret contacts with illegal groups abroad that were trying to overthrow the Government, coordinating activities and accepting subversive materials from them". Colonel Kyaw Thein, a military intelligence official, added that "democratic freedoms, including political opposition, can cause instability" and that these activities "must be put on hold while Myanmar focuses on economic progress". On 25 September, in an article published by the State-run newspaper New Light on Myanmar, it was mentioned that Daw Aung San Suu Kyi would soon be charged with political crimes as she was working in conspiracy with former colonial powers and aiding exiled dissident groups in a plot to topple the Government. Earlier, military intelligence officers claimed to have charts and printed material proving Daw Aung San Suu Kyi's involvement with exiled dissident groups.

107. Aside from the weekly gatherings at Daw Aung San Suu Kyi's house, NLD has been subjected to intense and systematic harassment. It is reported that members of the party are constantly intimidated by local authorities as well as by armed forces personnel. After the withdrawal of the NLD delegates from the National Convention, several reports indicate that new restrictions have been placed on NLD members and that Vice-Chairmen U Tin Oo and U Kyi Maung are reportedly under constant surveillance and routinely harassed. Their houses, as well as Daw Aung San Suu Kyi's residential compound, are under constant surveillance.

108. Reports indicate that there were repeated attempts to restrict NLD leaders' movements. In March 1996, when NLD leaders, including Daw Aung San Suu Kyi,

U Kyi Maung and U Win Tin, attempted to travel to Mandalay to give testimony at the trial of NLD members, they were told just before they arrived at the train station in Yangon that their railway carriage was broken. Most of the NLD leaders who wish to travel outside Yangon are required to inform the authorities in advance. On arrival at their destination, they have to report to the local authorities. Whenever members of NLD travel outside their residential areas, the houses where they will be residing are allegedly checked strictly to see if the owners have been prompt in reporting the visitors to the local authorities. Should the owner be a member of the civil services, he is asked not to allow members of NLD to stay in his house.

109. It is further reported that when a house is rented out to any political party, the landlord has to give a signed undertaking to the Township Law and Order Restoration Council agreeing to accept all the consequences that might follow - sealing of the premises, confiscation of the house and even arrest of the owner. On 3 March 1995, NLD applied to the Yangon Division General Elections Commission for permission to open its Yangon Division Office on a new site. There was no response from the Commission. The Yangon Division NLD made three further applications, on 9, 17 and 24 May 1995, to open its new office, but to date there has been no response of any kind.

110. Many members of political parties have been reportedly evicted from State-owned apartments where they had lived for many years. This was reportedly the case of U Win Tin and U Tin Latt of NLD, and Boh Aung Naing of the People's Volunteer Organization.

111. As a further form of harassment, a concerted effort was made by local authorities to remove all signs of an NLD presence on main roads or at any place where they might be exposed widely to the public. Consequently, NLD offices have reportedly had to be moved to obscure locations. The Special Rapporteur was told that in Mayangone (Yangon Division), the authorities demanded that the NLD signboard be reduced in size. It was further reported that in Sagaing Division, the Township Law and Order Restoration Council offices sent a letter to NLD offices instructing them to take down their signboards.

112. The harassment of NLD and the pressure under which its members are living have led some of them to resign. The resignation is publicized in the Government-controlled newspaper, New Light on Myanmar. In its edition of 2 July 1996, the following article was published:

> "Dr. Kyin Thein of the National League for Democracy, Hluttaw representative elected at the Multi-party Democracy General Election from Yay Township Constituency-2, Mon State, submitted of his own volition to the Multiparty Democracy General Election Commission that he be permitted to resign as Pyithu Hluttaw representative-elect as he no longer wishes to do party politics; and U Sai Aung Than of the National League for Democracy, Hluttaw representative elected at the Multi-party Democracy General Election from Hsipaw Township Constituency-2, Shan State, also submitted of his own volition to the Commission that he be permitted to resign as Pyithu Hluttaw representative-elect as he has already resigned as a member and organizer of the National League for Democracy and no longer wishes to be involved in party politics.

"The Commission announces that Dr. Kyin Thein and U Saing Than have been permitted to resign from being representatives-elect of Yay Township Constituency-2 and Hsipaw Township Constituency-2 respectively effective today under Section 11 (e) of the Pyithu Hluttaw Election Law".

113. With respect to the right to form and join trade unions, and although Myanmar had freely ratified ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organize in 1955, workers and employees in Myanmar do not enjoy the right to join organizations of their choice outside the existing structure. Furthermore, such organizations do not have the right to join federations and confederations or to affiliate with international organizations without impediment.

114. The Government of Myanmar announced that the Laws Scrutiny Central Body was reviewing a draft trade union law so as to protect the rights of workers and that, in the near future, the body of laws pertaining to freedom of association in Myanmar would be in line with Convention No. 87.

115. The Special Rapporteur has noted that, in June 1996, at the eighty-third session of the International Labour Conference in Geneva, the matter of freedom of association and protection of the right to organize in Myanmar had again been raised, for the ninth time since 1981, before the Committee on the Application of Standards. The Committee of Experts had commented on its application in Myanmar in 12 of its last 15 reports. Yet, ILO had not received any report from the Government, as requested by the Committee in a special paragraph of its report in 1995. To date, no developments whatsoever, either in law or in practice, had been conveyed to the Office of ILO. The necessary measures had not been taken in order to ensure workers the right, without prior authorization, to form organizations of their choice to effectively defend their interests, and to guarantee organizations of workers and employers the right to affiliate with international organizations of the same kind, as provided in articles 2, 5 and 6 of the Convention.

116. This year, after having taken note of the information provided by the Government of Myanmar and the subsequent discussion, the Committee deeply regretted the fact that very serious and persistent violations of the fundamental principles of the Convention were continuing in Myanmar. The Committee could only observe that there were no trade unions in the country whose objective was the defence and the promotion of the interests of the workers in the sense of the Convention. The Committee urgently requested the Government to take all necessary measures to guarantee the workers and the employers the right to set up the organization of their choice, without previous authorization, as well as the right of the organizations to become affiliated to international workers' and employers' organizations.

H. Freedom of movement and forced relocation

117. With regard to the freedom of movement inside the country, the Special Rapporteur notes that Myanmar citizens are required to inform the authorities of their movements within the country and the names of overnight guests must be reported to and registered with the local authorities. Furthermore, the Special

Rapporteur has been informed that only citizens carrying identity cards are free to travel within the country, which precludes those residents unable to meet the restrictive provisions of the citizenship law, such as the Muslim population living in Rakhine State.

118. Leaving the country requires the possession of specific government authorization, which it is reportedly difficult to obtain. Application for exit visa and passport requires certificates of nationality and security clearances which many citizens either do not possess or cannot obtain. Passport applications are reviewed by a board and decisions appear to be dependent on political considerations. The Special Rapporteur has been informed that each time Myanmar citizens come back to their country, they have to return their passports to the authorities and a passport application should be submitted each time they want to travel outside the country.

119. Reports indicate that the Government has been responsible for the forced displacement of nearly 100,000 Myanmar citizens. Ethnic minorities living in places where armed opposition groups are active are relocated into areas under government control. The aim is to cut insurgents from local support and to prevent them having access to food supply. Relocated persons seem not to be given enough time or possibilities to bring all their possessions with them. Often livestock must be left behind and houses are burned by the army. The relocated persons are said to receive little or no compensation and cannot take much with them when they leave their houses. Contrary to promises given by the army before relocation, it appears that the relocation sites are not prepared for the arrival of large numbers of people, the ground is not cleared and there are inadequate water supplies. The relocated persons must reportedly buy their plots of land at the allocated areas, and people live in shelters or under other people's houses, as they cannot afford to build new houses.

120. Information received by the Special Rapporteur suggests that 98 villages in central Karen State received orders to relocate on 1 and 2 June 1996. It is, for example, reported that the villagers in the area between the Pon River and Salween River were told to move to relocation sites beside SLORC army camps at Sha Daw and Ywathit by 7 June, and that after this date army troops would enter the villages and consider anyone remaining there as enemies.

121. Forced relocation has also been reported in central and southern Shan State since March 1996. In this area, almost every village away from towns and major roads has reportedly been forced to move, covering the entire region from Salween River westwards to Lai Kha and Mông Kung, and from Lang Ker and Mong Nai in the south northwards to the area west of the ruby mines at Mong Hsu.

122. Relocated persons are subject to restrictions of movement and a written pass is needed in order to leave the relocation site. A Shan farmer reported that those who have been relocated as of March 1995 in the site near Baw La Keh, Karen State, are not permitted to go further than 3 miles from the camp. Persons who have been relocated in a camp called Shadaw in June 1996 reported that they were given no food and that in order to leave the camp and return to their village to obtain food, they had to pay for a pass and could only be away for two days.

123. Villages resisting relocation are reportedly subject to harassment, looting, burning and torture. Reports suggest that by the end of October 1995, 17 villages in Bawgali area had been burned and livestock shot in an attempt to drive villagers into military-controlled areas. Hundreds of villagers were reportedly taken as porters, and others shot on sight.

124. Reports received indicate that large groups of relocated villagers have been used as forced labour on road construction or army projects. In April 1996, the population of Wan Jok village, consisting of about 125 households in Murng Kerng township, was allegedly forcibly relocated to a site on the main road north of Murng Kerng going to Tsipaw. Half of the households had to provide one person each for week-long shifts repairing the road to Tsipaw. A total of about 600 persons from different villages worked on the site, including old persons, women and children. Guards oversaw the work, and allegedly beat a man who went to the toilet without having asked for permission.

125. Another reason for forced displacement in the country is the need to make way for a great number of government infrastructure projects. In Yangon, Mandalay and other touristic cities such as Pagan, a number of inhabitants have been forced to move because the area where they lived would become a construction ground for a tourist project such as a hotel or in connection with the building of roads and other facilities. It was reported that the people displaced were not given appropriate compensation and were forced to live in satellite towns. It was reported that as part of a government project to extend the Yangon-Mandalay highway, many buildings close to the road have been torn down without compensation.

I. Forced labour

126. The Forced Labour Convention of 1930 (ILO Convention No. 29) requires the suppression of the use of forced or compulsory labour in all its forms. The Convention defines forced or compulsory labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The loss of rights and privileges falls under the definition of penalty. Work of a purely military character is exempted from the provisions of the Convention. This concerns military service for the purpose of national defence, but not compulsory obligation to execute public works. The Convention also makes an exception for work or service required in genuine cases of emergency and forming part of normal civic obligations of citizens in a fully self-governing country. Another exception is prison labour. Prison labour may, however, only be imposed as a consequence of a conviction in a court of law and the person concerned shall be supervised and controlled by public authorities, not placed at the disposal of private individuals, companies and associations.

127. Although Myanmar had freely ratified ILO Convention No. 29 in 1955, the situation of forced labour in Myanmar has continued to worsen. In 1995, the ILO Governing Body stated that the Myanmar Village Act and the Towns Act were contrary to Convention No. 29 and urged the Government of Myanmar to amend both acts in order to bring them into line with the Convention, and to ensure that the formal repeal of the powers to impose compulsory labour be followed up in

practice and that those who resort to coercion in the recruitment of labour be punished. It is to be recalled that both acts provided "for the exaction of labour and services, including porterage service, under the menace of a penalty from residents who have not offered themselves voluntarily".

128. The Government of Myanmar announced that the process of amending the Village Act and the Towns Acts had started and that both acts were under review. In this regard, a board had been formed to monitor the progress made in reviewing the Village Act of 1908 and Towns Act of 1907. The Special Rapporteur notes that ever since 1967, the Myanmar Government has stated that the authorities no longer exercise the powers under the Village Act and the Towns Act, these being established under colonial rule, not corresponding to the country's new social order and obsolete and soon to be repealed. But, to date, both acts, which authorize forced labour under certain conditions, have still not been repealed and are therefore still into force.

129. The Special Rapporteur has noted that in June 1996, at the eighty-third session of the International Labour Conference in Geneva, the matter of forced labour in Myanmar had again been raised, for the third time since 1992, before the Committee on the Application of Standards. This year, after having taking note of the information provided by the Government of Myanmar and the subsequent discussion, the Committee was deeply concerned by the serious situation prevailing in Myanmar over many years where systematically recourse was had to forced labour. The Committee once again required the Government formally to abolish and urgently cancel the legal provisions and to abandon all practices that were contrary to the Convention. It urged the Government to prescribe truly dissuasive sanctions against all those having recourse to forced labour. The Committee hoped that the Government would, without further delay, take all necessary measures to abolish forced labour and to provide next year all necessary detailed information on concrete measures taken or envisaged to abolish in law and in practice the possibility of imposing compulsory labour. Moreover, the Committee decided to mention this case in its report as one of persistent failure to implement Convention No. 29 since, over a period of several years, there had been a serious and continued discrepancy in law and practices.

130. The Myanmar authorities continue to deny the existence of the practice of forced labour in the country. According to the argumentation of the Government of Myanmar, the concept of forced labour is not applicable to Myanmar, because the people of Myanmar are voluntarily participating in labour for community development, such as the construction of pagodas, monasteries, schools, bridges, roads, railways. During the last visit of the former Special Rapporteur, he was told in his meeting with Secretary One that "stories about forced labour were not true, ... the people of Myanmar were of the Buddhist faith and were willing to contribute voluntarily to the development projects" (E/CN.4/1996/65, para. 30). The same argumentation was confirmed to him by the Minister for National Planning and Economic Development. However, during the same visit, Professor Yozo Yokota received the text of two secret directives of SLORC which prohibit the practice of labour without payment. Directive No. 82 from 27 April 1995 concerns irrigation projects, while Directive No. 125 of 2 June 1995 concerns national development projects (ibid., annexes II and III).

131. The existence of such directives suggests implicitly that the concept of voluntary contribution is not always valid since the people involved for a specific project should, in accordance with these directives, be remunerated for their contribution. Indeed, although welcoming the introduction of payment for workers in irrigation and development projects, the Special Rapporteur notes that if a person is obliged to perform a certain job for which he has not offered himself voluntarily, this constitutes forced labour, irrespective of whether he receives any payment or not. Furthermore, the Special Rapporteur notes that the content of neither directive constitutes abrogation of any of the laws under the 1908 Village Act and the 1907 Towns Act. The Special Rapporteur notes that almost two years after their publication, these directives are still not public and therefore not accessible to persons whose rights are designed to be protected and who might be accused of breaking the law.

132. The Special Rapporteur continues to receive numerous reports from a wide variety of sources indicating that the practice of forced labour remains widespread in Myanmar. It has been alleged that civilians are forced to contribute non-compensated labour to certain large development projects. The projects concerned are said to include the building of roads, railways, bridges and gas pipelines. People living in villages near the various projects are said to be frequently forced to contribute labour under the threat of reprisals if they do not comply with the request. Numerous reports indicate that there is an especially extensive use of forced labour in several railway construction projects. Elderly persons, and sometimes children, have reportedly been seen working along the railway. According to reports received, the poor conditions at construction sites have led to accidents and illness, sometimes causing the death of several persons. The following are illustrative of reports which have been received by the Special Rapporteur.

133. The people of Ahphyauk town in Ayeyarwaddy Division have been made to work on an irrigation canal with a length of about 25 miles. Those who refused were fined 1,300 kyats or, if they could not pay, were prosecuted under section 12 of the Village Act and sentenced to one month's imprisonment from July to August 1996.

134. U Win Maung, from Hinthada in Ayeyarwaddy Division, was asked to contribute labour to build an embankment. Since he was too old, he sent his 15-year-old son. The authorities refused to accept the son. U Win Maung was thereupon taken to the police station, where he was subjected to severe beatings. He was hospitalized from 17 to 24 March. On 5 April, he lodged a complaint against the Sub-Inspector of Police, but no action was taken.

135. In May 1995, about 200 villagers were ordered by the township military authorities to go to Heinze Island for two weeks, where they cleared ground, constructed a helicopter pad, and built bamboo barracks and a wooden guest house. The workers received no wages, and were forced to pay for the petrol used in the boat which took them to the island. Villagers who refused to go were fined or arrested and sent to conflict areas to serve as porters for the military. Forced labour shifts in the area used to occur once a year. Now they occur three times a year and last much longer.

136. In August and September 1995, a Mon farmer from Ye Puy township was allegedly forced to build army buildings near the pipeline at On Bib Kwin and in Daik harbour. He was also repeatedly brought in to cut trees and clear bushes for the road between periods of forced portering.

137. The SLORC is building a two-floor museum for ancient Buddha images and other ancient objects in the town of Sittwe with the help of forced labour from the town. In autumn 1995, 200-300 persons per day, including children and elderly persons, have been forced to work on the building site, as well as children and elderly persons. Everyone has to work at least three times a month from 8 a.m. to 6 p.m. No one is paid for the work. The soldiers have beaten and kicked some workers badly.

138. According to a visitor, in Bassein, Irrawaddy Division, the Myanmar authorities wanted to exploit the beauty of Nga Saw beach northwest of Bassein, 20 miles north of Chaung Tha beach. They transferred a number of battalions there to prepare it for "Visit Myanmar Year". The local villagers had to construct a new road from Nga Saw to Thalat Kwa, close to Bassein, the height of which being 10-12 feet and the width at least 30 feet, and to clear the ground for barracks and bungalows. The villagers were forced to pay for the fuel and operating costs of the bulldozers. They received no pay and no medical assistance when accidents occurred, and they had to bring their own food and supplies to the construction site.

139. In March 1996, villagers were forced to go to the village of Tu Kaw Koh to cut trees and carry timber to the sawmill in Kyet Paung village. Some villagers also had to work at the sawmill. The planks were then taken to a battalion headquarters, each village having to provide a certain number of carts with bullocks. Villagers also had to collect wood for the army brick factory, part of which was then sold back to the villagers by the soldiers.

140. The phenomenon of forced recruitment of civilians for the purpose of portering is reportedly still practised in Myanmar. Conditions for porters are described as brutal, with forced marches over mountains with heavy loads. According to the reports received, porters could be divided into several categories, i.e., operations porters, taken for the duration of a specific military operation; permanent or shift porters, provided by villages on written Myanmar Army orders: they work a set length of time and must be replaced by their village; emergency porters, demanded from villages for special tasks such as monthly rice delivery to troops; porters of opportunity - often farmers met on the road and kept on in case they are needed; punishment of civilians taken in urban or semi-urban areas as reprisals for minor infractions; convict porters, taken from prisons to frontline, and, paid porters, employed by more affluent villagers to accompany the army in their stead. Porters are reported to have been rounded up by the military at home, at work places and even at schools to carry military material as well as supplies for the troops.

141. Porters are said to be ill-treated, given too little food and no medical care if they are ill or wounded. Porters attempting to escape are reportedly shot. Elderly persons, women and children have reportedly also been used as porters. Numerous reports indicate that the treatment of porters is brutal. The Special Rapporteur notes that porters are reportedly civilians forced to do

work of a civilian nature, and porterage does not therefore fall under the exception for work of a military character mentioned in article 2(2)(a) of the 1930 Convention. The conditions of porterage in Myanmar can neither be considered "part of the normal civic obligations of the citizens of a fully self-governing country" that would qualify for exemption under article 2(2)(b) of the Convention.

142. In a letter addressed to the Assistant Secretary-General for Human Rights, on 13 February 1995 (E/CN.4/1995/148), the Myanmar Ambassador, Maung Aye, explained that porters are recruited only on certain conditions. According to section 8(1)(n) of the Village Act and section 7(1)(m) of the Towns Act, they must be unemployed, physically fit to work as porters and a reasonable amount of wages must be fixed and agreed to beforehand. The Government has further stated that they are equitably compensated in the event of injury. There are, however, several reports to suggest large-scale non-respect of even these criteria in practice.

143. On 10 December 1995 a group of soldiers reportedly arrived at Meh Bleh Wah Kee in the Day Law Pya area, arrested the 10 persons who did not flee, including at least one woman, in the fields where they were working. They were reportedly forced to carry very heavy army equipment across the Dawna mountains to Ber Kho on the other side. The trip took two days, during which they were followed by a village elder from Meh Bleh Wah Kee. On 13 December 1995, they were released and able to return with the village elder.

144. A Mon rubber planter was reportedly caught by a SLORC soldier in January 1996 and tied up with a rope. He was forced to carry army material such as guns and bullets for 17 days before he was able to run away.

145. In March 1996, a Mon fisherman from Taung Kun village in Ye township was allegedly forced to serve as a porter for the army. First, the village headman reportedly asked him to pay porter fees to SLORC in lieu of portering, but he did not even have enough food to eat at home and could not pay. SLORC soldiers coming to the village thereupon kicked him in the back with army boots until he coughed blood, and arrested him. He was serving as a porter for 15 days, but then fled together with other men. The soldiers returned to the village to question the women about where the men were, and reportedly beat them.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

146. The Special Rapporteur regrets that his efforts to obtain the cooperation of the Government of Myanmar and to visit the country have so far failed. Nevertheless, he is confident that much of the evidence brought to his attention speaks for itself in the light of the laws of Myanmar received by the Centre for Human Rights.

147. The Special Rapporteur observes that the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Myanmar insofar as this absence implies a structure of power

which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights. The Special Rapporteur concludes that genuine and enduring improvements in the situation of human rights in Myanmar may not be attained without respect for the rights pertaining to democratic governance. In this regard, he notes with particular concern that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has still not yet reached its conclusion and that the Government still has not implemented its commitments to take all necessary steps towards the establishment of democracy in the light of those elections.

148. Government representatives have repeatedly explained that the Government is willing to transfer power to a civilian government but that, in order to do so, there must be a strong constitution and that, in order to have a strong constitution, they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but observe that, given the fact that most of the representatives democratically elected in 1990 have been excluded from participating in the meetings of the National Convention, the restrictions imposed upon the delegates (practically no freedom to assemble, print and distribute leaflets or to make statements freely), and the general guidelines to be strictly followed (including the principle regarding the leading role of the Tatmadaw), the National Convention does not constitute the necessary "steps towards the restoration for democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990".

149. Detailed reports and photographs seen by the Special Rapporteur lead him to conclude that extrajudicial, summary or arbitrary executions, the practice of torture, portering and forced labour continue to occur in Myanmar, particularly in the context of development programmes and of counter-insurgency operations in minority-dominated regions.

150. With regard to allegations of arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale if for no other reason than an examination of the laws in place which show that such violations are legalized and may easily occur. At the same time, the absence of an independent judiciary, coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing enormously disproportionate penalties and authorizing arrest and detention without judicial review or any other form of judicial authorization, leads the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Myanmar are arbitrary when measured by generally accepted international standards. In this regard, the Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, in particular elected representatives, and the recent arrests and harassment of other supporters of democratic groups in Myanmar, culminating at the end of September 1996 in the massive arrests of NLD supporters and the virtual blockade of the Secretary General of NLD in her compound.

151. On the basis of virtually unanimous reports and other information, the Special Rapporteur concludes that there is essentially no freedom of thought, opinion, expression or association in Myanmar. The absolute power of SLORC is exercised to silence opposition and penalize those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a

climate of fear that whatever they or their family members may say or do, particularly in the area of politics, involves the risk of arrest and interrogation by the police or military intelligence. The Special Rapporteur notes that NLD leaders cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed material. In this situation it is difficult to assume that open discussion and free exchanges of views and opinions can possibly take place in Myanmar, unless they are in support of the present military regime.

152. Turning to freedom of movement and residence in Myanmar, including the right to leave and re-enter one's own country, the Special Rapporteur concludes that there are clear violations of these freedoms found in Myanmar law and practice themselves. Specifically, severe, unreasonable and, in the case of the Muslim Rakhine population, racially based restrictions are placed on travel inside the country and abroad. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence and, in some cases, constitutes discriminatory practices based on ethnic considerations.

B. Recommendations

153. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(1) The Government of Myanmar is urged to fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur would wish to note that the Government of Myanmar should encourage the adoption, as one of the basic constitutional principles, of the provisions of the Universal Declaration of Human Rights, a copy of which should be made widely available in the Burmese language.

(2) The Government of Myanmar should further consider accession to the International Covenants on Human Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the two protocols additional to the Geneva Conventions of 1949.

(3) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and insurance of the minimum standards of judicial guarantees.

(4) In the interest of ensuring that the Government of Myanmar genuinely reflects the will of the people, steps should be taken to allow all citizens to participate freely in the political process, in accordance with

the principles of the Universal Declaration of Human Rights, and to accelerate the process of transition to democracy, in particular through the transfer of power to the democratically elected representatives. The institutions of government should benefit from a separation of powers as to render the executive accountable to the citizenry in a clear and meaningful way and, furthermore, steps should also be taken to restore the independence of the Judiciary and to subject the Executive to the rule of law and render executive action justiciable.

(5) The Government of Myanmar is urged to take all necessary measures to accelerate the process of transition to democracy and to involve in a meaningful way in that process the representatives duly elected in 1990. In this regard, the Government of Myanmar should without delay begin a process of genuine and substantive dialogue with the leaders of the National League for Democracy and with other political leaders who were duly elected in the democratic elections of 1990, including representatives of the ethnic minorities.

(6) The Government of Myanmar should also take all necessary measures to guarantee and ensure that all political parties may freely exercise their activities without restrictions.

(7) All political detainees, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations, or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in open judicial proceedings and in accordance with all the guarantees of fair trial and due process in conformity with applicable international norms. If found guilty in such judicial proceedings, they should be given a just sentence proportionate to their offence. Otherwise, they should be immediately released with the responsibility of the Government to refrain from all acts of intimidation, threats or reprisal against them or their families and to take appropriate measures to compensate all those who have suffered arbitrary arrest or detention.

(8) The Government of Myanmar should ensure that all laws rendering violations of human rights legitimate are urgently repealed, that laws are given due publicity and that the principle of non-retroactivity of penal laws is respected.

(9) The Government of Myanmar should give particular attention to prison conditions in the country's prisons and take all the necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners.

(10) The Government of Myanmar should take steps to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views, relinquishing government controls over the media and literary and artistic works.

(11) The Government of Myanmar should remove all restrictions relating to the entry and exit of citizens into and out of the country, as well as their movement within the country.

(12) The Government of Myanmar should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and compensate appropriately those who have been arbitrarily or unjustly deprived of their property.

(13) The Government of Myanmar should fulfil its obligations under International Labour Organization Convention (ILO) No. 87 concerning Freedom of Association and Protection of the Right to Organize of 1948. In that respect, the Government of Myanmar is encouraged to cooperate more closely with ILO through a technical cooperation programme so that the very serious discrepancies between the law and the practice on the one hand, and the Convention, on the other hand, are urgently eliminated.

(14) The Government of Myanmar is urged to comply with its obligations under ILO Convention No. 29, prohibiting the practice of forced labour and forced portering. In this connection, the Government of Myanmar should urgently take the appropriate measures to repeal the offending legal provisions under the Village Act and the Towns Act to prevent the continuation of the practice of forced labour. The Government of Myanmar is encouraged to cooperate with ILO to that end.

(15) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so as to prevent arbitrary killings, rapes, and confiscation of property, or forcing persons into acts of labour, portering, relocation or otherwise treating persons without respect to their dignity as human beings. When local villagers are hired for porterage and other works, adequate wages should be paid. The nature of the work should be reasonable and in accordance with established international labour standards. When the relocation of villages is considered necessary for military operations or for development projects in the public interest, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations; the extent of the compensation should be reviewable by independent courts.

(16) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities towards all persons in full accord with in international human rights norms and humanitarian law. Such standards should be incorporated in Myanmar law, including the new constitution to be drafted.

(17) Given the magnitude of the abuses, the Government should subject all officials committing human rights abuses and violations to strict disciplinary control and punishment and put an end to the culture of impunity that prevails at present in the public and military sectors.

ANNEX

Extracts from:

"The State Law and Order Restoration Council Declaration
(Declaration No. 1/90)
The Sixth Waxing Day of Waqaung, 1352 ME
(27 July 1990)

...

12. Section 3 of the Pyithu Hluttaw Election Law provides that 'The Hluttaw shall be constituted with the representatives elected from the constituencies in accordance with this law'. The State Law and Order Restoration Council will take measures for summoning the Hluttaw in accordance with this provision. The Information Committee has from time to time explained that the Multi-Party Democracy General Election Commission, the parties which won seats in the election and the elected representatives should carry out measures which should be carried out in accordance with the law and rules.

15. There will be no necessity to clarify the fact that a political party cannot automatically get the three aspects of State Power - the legislative power, the executive power and the judicial power - just because a Pyithu Hluttaw has come into being and that they can only be obtained on the basis of a constitution ...

18. It can be seen from the statements issued that the desire of the majority of the political parties which contested in the Multi-Party Democracy General Elections is to draw up a new constitution. It will be seen that when the Constitution of 1947 was drawn up, matters concerning the national races were discussed only with the Shan, Kachin and Chin nationals at the Panglong Conference and that they were not discussed with the Mon and Rakhine nationals. Today, in Myanmar Naing-Ngan there are many national races who have awakened politically and it is obvious that it is especially necessary to draw up a firm constitution after soliciting their wishes and views.

19. As the State Law and Order Restoration Council is a military government, it exercises martial law. As such it exercises the following three aspects of State Power in governing Myanmar Naing-Ngan:

(a) Legislative power: only the State Law and Order Restoration Council has the right to exercise it.

(b) Executive power: The State Law and Order Restoration Council has the right to exercise it, however it has delegated this power to the Government, State/Division, Township Zone, Township and Ward/Village-tract Law and Order Restoration councils at different levels and has caused administrative work to be carried out through collective leadership. This is a form of giving training to the service personnel so that they will be able to perform, by keeping themselves free from party politics, their departmental work under the government that will come into being according to the constitution.

(c) Judicial power: The State Law and Order Restoration Council has the right to exercise it. However, the Government has formed courts at different levels to adjudicate on ordinary criminal and civil cases so that they will have practical training when a constitution comes into being.

20. Consequently, under the present circumstances, the representatives elected by the people are those who have the responsibility to draw up the constitution of the future democratic State.

21. It is hereby declared that the State Law and Order Restoration Council will in no way accept the drawing up of a temporary constitution for forming a government to take over State Power and that it will take effective action if it is done so, and that in the interim period before a government is formed in accordance with a new firm constitution drawn up according to the desires and aspirations of the people, the State Law and Order Restoration Council (Tatmadaw) will defend and safeguard:

(a) The three main causes - such as the non-disintegration of the Union, non-disintegration of national solidary and ensuring perpetuity of the sovereignty;

(b) Of the four main tasks mentioned in the State Law and Order Restoration Declaration No. 1/88 such as the prevalence of law and order, the rule of law, regional peace and tranquillity, ensuring safe and smooth transportation and communication, easing the food, clothing and shelter problems of the people and holding Multi-Party Democracy General Election, the first three main tasks (with the exception of the task of holding Multi-Party Democracy General Election);

(c) The task of bringing about the development of all the national races of Myanmar Naing-Ngan.

By order,

Sd. Khin Nyunt

Secretary - 1

The State Law and Order Restoration Council"